* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CM(M) 842/2007

Date of Decision : October 12, 2007

Devender Pal & Ors. ..... Petitioners
through Mr. I.C.Kumar, Advocate

Versus

Ramesh Chander & Anr. .....Respondent
Through Mr. Sanjeev Sachdeva , Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporter or not ?

3. Whether the judgment should be reported in the `Digest?'

REKHA SHARMA, J.

The petitioners are the successors-in-interest of Shri Bakshi Ram. They are tenants of a room bearing private No.5 in property bearing number 12/30, East Patel Nagar, New Delhi and are facing eviction proceedings in the court of Additional Rent Controller under Section 14(1)(b) of the Delhi Rent Control Act 1958 on the allegation that late Bakshi Ram had sublet the premises to Shri Tirath Ram.

At the stage of evidence before the Additional Rent Controller, the landlord Shri Ramesh Chander by way of his examination-in-chief filed his affidavit dated October 24,2002 and alongwith it besides other documents filed cheque dated May 25,1992 and a covering letter of the same date. On January 28,2004 he entered the witness box and tendered his affidavit in evidence which was exhibited as P1. The cheque dated May 25,1992 and the covering letter were exhibited as Ext.PW1/2 & PW1/3. The exhibiting of these two documents was objected to by learned counsel for the tenant. It is so mentioned in the evidence of PW1 recorded on that day in the following words :

“ objected to the documents Ext.PW1/2 and Ext.PW1/3.”

Notwithstanding the objection taken counsel for the tenant went ahead with the cross examination of PW1 and thereafter he further cross-examined him on September 28,2004. However, on December 23, 2004, the tenants filed an application under Order 13 Rule 4 of the Code of Civil Procedure stating that as they had taken an objection to the cheques and the covering letter dated May 25,1992 being exhibited as PW1/2 & PW1/3 those documents could not be

taken to have been admitted in evidence and therefore should be returned to the landlord before proceeding further in the matter. Reliance in this regard was placed upon a judgment of the Apex Court titled R.V.E.Venkatachala Gounder V. Arulmigu Viswesaraswami and V.P.Temple and another AIR 2003 SC 4548. The Additional Rent Controller vide order dated April 24,2007 dismissed the application. It is against this order that the tenants have preferred the present petition.

The aforementioned judgment on which reliance was placed before the Additional Rent Controller as also before me lays down that Order 13 Rule 4 of the Code of Civil Procedure provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initiated by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case the document may be returned by the Court to the person from

whose custody it was produced. It is further laid down in the judgment that the objection as to the admissibility of a document can be of two kinds. One to the admissibility of the document itself and the other to the manner of proof of the document though it may be otherwise admissible. The Court says that so far as the first category of objection is concerned it can be raised at any stage of the proceedings but with regard to the other category where it relates to the mode of proof of the document the objection should be taken at the earliest possible so that the party seeking to prove the same in evidence is able to take remedial steps in proving it as per the law of evidence.

In the present case the tenants though objected to the exhibiting of documents as Ext.PW1/2 & PW1/3 but did not specify the nature of the objection. It is not discernible from the evidence recorded on January 28,2004 whether the objection taken was to the admissibility of the document itself or to its mode of proof. As noticed above having taken an objection counsel for the tenants did not insist that the matter should not be proceeded further till the objection raised was heard and decided. He went ahead with the cross-examination of PW1 not

only on that day but also on September 28,2004. It was after about 11 months of the first date of recording of evidence of PW1 that the tenants chose to file an application under Order 13 Rule 4 of the Code of Civil Procedure. This goes to show that the tenants were not serious in pursuing the objection promptly and the application was filed only to delay the progress of the case. What is of significance is that the Additional Rent Controller in his order dated April 24,2007 has not declined to deal with the objection. He has rather left the question open by stating that the objection regarding the admissibility of two documents exhibited as Ext.PW1/2 & PW1/3 shall be decided at the time of final disposal of the case and the tenant shall be at liberty to address arguments at the time of final adjudication as per law.

The approach adopted by the learned Additional Rent Controller is in consonance with the judgment of the Apex Court titled Bipin Shantilal Panchal Vs. State of Gujarat and another AIR (2001) 3 SCC 1. The following paragraph of the judgment needs to be reproduced:-

> It is an archaic practice that during the evidence -collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Such

> practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.
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> When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case(or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. There is no illegality in adopting such a course.

In view of what has been noticed above, I hold, that the petition has no merit. The tenants are guilty of causing unnecessary hurdles in the progress of the case. If they were so keen to get the objection raised by them decided they should have insisted for a decision on the objection taken and ought not to have proceeded with the cross-examination of PW1. The approach of the tenants was casual. Not only they did not insist upon a prompt decision but also did not specify the nature of objection regarding its admissibility. Be that as it may the impugned order fully safeguards their interest and I find no reason whatsoever to direct the Additional Rent Controller to return the documents Ext.PW1/2 & PW1/3 to the landlord at the present stage of the proceedings. Ofcourse, if after the tenants

have been heard by the learned Additional Rent Controller and in case it is found that the documents as tendered by the landlord cannot be taken in evidence the Additional Rent Controller will pass appropriate orders with regard to the return of documents.

For the foregoing reasons the petition is dismissed. Parties shall appear before the Additional Rent Controller on November 5,2007.

REKHA SHARMA,J.

October 12, 2007
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